

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Guaranteed Rate Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions

Date of Hearing: October 27, 2015

Case No.: 51015

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$4,497.23 in unpaid commissions for a loan (hereafter the "Lacey loan") which closed after his termination. The Lacey loan closed within thirty days of his termination, which requires the employer to pay the commission to him pursuant to his contract.

The employer (GRI) denies the claimant earned the commission for the Lacey loan. He did not meet the requirements to earn a commission.

FINDINGS OF FACT

The claimant worked for the employer as a loan originator.

The claimant originated a loan for the Lacey's which received approval to close on May 18, 2015.

The employer terminated his employment on June 3, 2015.

The Lacey loan funded on June 25, 2015, and closed on June 30, 2015.

The claimant claims commission due on this loan in the amount of \$4,497.23, as it was not within his control to meet the Corporate Objectives for this loan.

The employer argues the claimant did not meet the Corporate Objectives set forth in the contract to earn a commission on this loan.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The parties agree they executed a contract with the required pay notifications on January 15, 2013, previously submitted.

The contract states, in relevant part, "Corporate Objectives: In order for Employee to originate loans that will entitle Employee to earn compensation, all loans must be originated and funded pursuant to the applicable Corporate Objective as detailed in Addendum I. **It is the Employee's duty and responsibility to ensure that pricing, fees collected, and the loan parameters result in loans funded generating revenue to the Company equal to or exceeding the applicable Corporate Objective-all fees must be charged to the borrower if they have not previously been priced into the loan for the purpose of meeting Corporate Objectives.**"

The policy also states that upon termination, "you will still receive payment for all saleable loans that you originate if they disburse within 30 days of the termination date, unless addressed in a different manner elsewhere in the Agreement."

The parties agree the claimant chose his Corporate Objective of 300 BPS.

The employer closed this loan after the claimant's termination, with a Corporate Objective of 150 BPS. They attempted in good faith to close the loan within thirty days of the claimant's termination. They also closed the loan with a rate of 3.75% because the claimant had discussed this rate with the Lacey's via email though he had not guaranteed it. Because of the lower rate, they could only reach a BPS of 150.

The claimant's argument that he would have moved the loan to his new employer if he had known he would not receive this commission is not persuasive.

The claimant's argument that because he had been terminated and was not able to close the loan at the appropriate Corporate Objective to receive a commission, is also not persuasive. The agreement clearly notified the claimant of the requirements to earn a commission. The fact that he was not there to close the loan himself does not change the fact that the requirements to earn commissions were not met. He did not meet the requirements; therefore, he did not earn the commission for this loan.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions under the written policy of the employer.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/commissions, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 13, 2015

MJD/kdc